

Amendments to House Bill No. 397  
3rd Reading Copy

Requested by Senator John Esp

For the Senate Judiciary Committee

Prepared by Valencia Lane  
March 10, 2009 (1:36pm)

1. Title, line 6.

Following: "~~GRANDCHILD~~"

Strike: "RELATIVE'S"

Following: "CHILD"

Strike: "IS TO BE"

Insert: "THAT IS RELATED HAS BEEN"

2. Page 2, line 5.

Following: "~~to be~~"

Strike: "RELATIVE'S"

Following: "CHILD"

Insert: "that is related"

3. Page 2, line 12.

Strike: "this section"

Insert: "41-3-301"

- END -

**41-3-206. Procedure in case of child's death.** (1) A person or official required to report by law who has reasonable cause to suspect that a child has died as a result of child abuse or neglect shall report the person's suspicion to the appropriate medical examiner or law enforcement officer. Any other person who has reasonable cause to suspect that a child has died as a result of child abuse or neglect may report the person's suspicion to the appropriate medical examiner or law enforcement officer.

(2) The medical examiner or coroner shall investigate the report and submit findings, in writing, to the local law enforcement agency, the appropriate county attorney, the local child protective service, the family of the deceased child, and, if the person making the report is a physician, the physician.

History: En. Sec. 7, Ch. 543, L. 1979; amd. Sec. 5, Ch. 564, L. 1995.

#### Cross-References

Homicide, Title 45, ch. 5, part 1.

**41-3-207. Penalty for failure to report.** (1) Any person, official, or institution required by law to report known or suspected child abuse or neglect who fails to do so or who prevents another person from reasonably doing so is civilly liable for the damages proximately caused by such failure or prevention.

(2) Any person or official required by law to report known or suspected child abuse or neglect who purposely or knowingly fails to report known child abuse or neglect or purposely or knowingly prevents another person from doing so is guilty of a misdemeanor.

History: En. Sec. 15, Ch. 543, L. 1979; amd. Sec. 1, Ch. 367, L. 1985.

#### Cross-References

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

Liability for negligence as well as willful acts, 27-1-701.

Misdemeanor — no penalty specified, 46-18-212.

**41-3-208. Rulemaking authority.** (1) The department of public health and human services shall adopt rules to govern the procedures used by department personnel in preparing and processing reports and in making investigations authorized by this chapter.

(2) The department may adopt rules to govern the disclosure of case records containing reports of child abuse and neglect.

History: En. Sec. 1, Ch. 567, L. 1979; amd. Sec. 31, Ch. 465, L. 1983; amd. Sec. 2, Ch. 287, L. 1987; amd. Sec. 40, Ch. 609, L. 1987; amd. Sec. 7, Ch. 696, L. 1991; amd. Sec. 165, Ch. 546, L. 1995.

#### Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

### Part 3 Protective Care

#### Part Cross-References

Establishment of youth center, 7-16-2102, 7-16-2103, 7-16-2105.

Multicounty youth guidance centers, 7-16-2104.

**41-3-301. Emergency protective service.** (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place the youth in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical custody of the youth of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing and must advise the parents, parent, guardian, or other person having physical custody of the youth that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with the social worker concerning emergency protective services.

(2) If a social worker of the department, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided for in 45-5-206, against an adult member of the

household or that the child needs protection as a result of the occurrence of partner or family member assault against an adult member of the household, the department shall take appropriate steps for the protection of the child, which may include:

- (a) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault;
- (b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault from the child's residence if it is determined that the child or another family or household member is in danger of partner or family member assault; and
- (c) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.

(3) If the department determines that an adult member of the household is the victim of partner or family member assault, the department shall provide the adult victim with a referral to a domestic violence program.

(4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(5) If a child is removed from the child's home by the department, a child protective social worker shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An abuse and neglect petition must be filed within 5 working days, excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or voluntary protective services are provided pursuant to 41-3-302.

(6) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must be held within 20 days of the filing of the initial petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(7) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the social worker shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child. The district court may not order further relief until the parents, if they are reasonably available, are given the opportunity to appear before the court or have their statements, if any, presented to the court for consideration before entry of an order granting the petition.

(8) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing.

**History:** En. 10-1309 by Sec. 5, Ch. 328, L. 1974; amd. Sec. 19, Ch. 100, L. 1977; R.C.M. 1947, 10-1309; amd. Sec. 12, Ch. 543, L. 1979; amd. Sec. 1, Ch. 659, L. 1985; amd. Sec. 41, Ch. 609, L. 1987; amd. Sec. 166, Ch. 546, L. 1995; amd. Sec. 3, Ch. 281, L. 2001; amd. Sec. 2, Ch. 398, L. 2003; amd. Sec. 6, Ch. 504, L. 2003; amd. Sec. 3, Ch. 555, L. 2003; amd. Sec. 1, Ch. 422, L. 2005; amd. Sec. 1, Ch. 212, L. 2007.

**Compiler's Comments**

**2007 Amendment:** Chapter 212 in (5) inserted first sentence requiring that when a child is removed from the child's home by the department, a child protective social worker shall submit an affidavit regarding the circumstances of the emergency removal and in second sentence near beginning after "within" substituted "5 working days" for "2 working days" and after "emergency" substituted "removal" for "placement"; and made minor changes in style. Amendment effective October 1, 2007.

**Cross-References**

- Remedy for parental abuse, 40-6-233.
- Declaration of policy, 41-3-101.
- Action on reporting, 41-3-202.
- Abuse and neglect petitions, 41-3-422.
- Taking into custody, 41-5-321.
- Youth residential services, Title 52, ch. 2, part 6.

**41-3-302. Responsibility of providing protective services — voluntary protective services agreement.** (1) The department of public health and human services has the primary responsibility to provide the protective services authorized by this chapter and has the authority